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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ALFRED T. SAPSE, and RALPH M.  
14 CONTI, *et al.*,

15 Defendants.

Case No. 2:10cr370 KJD-RJJ

**ORDER**

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17 Presently before the Court is Defendant Ralph M. Conti's Motion *in Limine* (#123) to  
18 prohibit the Government from offering evidence of co-conspirator statements against Conti until  
19 independent evidence of the existence of a conspiracy is offered. The Government filed a response  
20 in opposition (#124) to which Conti replied (#130). Conti also filed an Addendum (#132) to his  
21 motion.

22 Federal Rule of Evidence 801(d)(2)(E) states that a statement offered against an opposing  
23 party that was made by the party's coconspirator during and in furtherance of a conspiracy is not  
24 hearsay. An accused's knowledge of and participation in an alleged conspiracy are preliminary facts  
25 that must be established before extrajudicial statements of a co-conspirator can be introduced into  
26

1 evidence. See United States v. Silverman, 861 F.2d 571, 576 (9th Cir. 1988)(citing Bourjaily v.  
2 United States, 483 U.S. 171 (1987)).

3 The Government asserts that it will not offer any co-conspirator statements against Conti, and  
4 that if it does it will comply with the Federal Rules of Evidence. Thus, the motion is granted.  
5 However, Defendant is cautioned that he must still object at trial to any statement that is offered  
6 without compliance with Rule 801, or proof of Defendant Conti's knowledge of or participation in  
7 the alleged conspiracy, because the Court has not definitively ruled to exclude any specific statement.  
8 See Fed. R. Ev. 103(b).

9 Accordingly, IT IS HEREBY ORDERED that Defendant Ralph M. Conti's Motion *in Limine*  
10 (#123) is **GRANTED**.

11 DATED this 29<sup>th</sup> day of October 2012.

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15 Kent J. Dawson  
16 United States District Judge  
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